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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 454

BERNARD SILBER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 17–22) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on June 30, 1961. A petition for rehearing was denied on August 1, 1961. On August 16, 1961, Mr. Justice Black granted an extension of time for the filing of a petition for certiorari to and including September 30, 1961, and the petition was filed on September 27, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the resolution of Congress authorizing the House Committee on Un-American Activities is unconstitutionally vague and whether the investigation was carried on by the Committee for a valid legislative purpose.

2. Whether the investigation violated petitioner's rights under the First Amendment.

3. Whether the trial court erred in excluding expert testimony on the factors which should be considered by the court in balancing the public and private interests involved in order to determine petitioner's rights under the First Amendment.

4. Whether a Congressional committee may subpoena a person to testify if it has reasonable basis for believing that he possesses information of value to it and, if so, whether the Committee had such information as to petitioner.

5. Whether the questions which petitioner was convicted for refusing to answer were pertinent to the subject under inquiry and whether petitioner was properly apprised of such pertinency.

6. Whether a defendant, who is indicted by a grand jury composed, in part, of federal government employees, is entitled to a hearing on the basis of general allegations that such jurors are biased and intimidated as a result of the government security program.

STATUTE INVOLVED

Section 192 of chapter 2 of the United States Code (R.S. 102, as amended) is set forth in the petition at page 3.

STATEMENT

Petitioner was charged in a four-count indictment (J.A. 2–3)[1] in the District Court for the District of Columbia with having unlawfully refused, in violation of 2 U.S.C. 192, to answer four questions pertinent to the matter under inquiry, asked him by a subcommittee of the House Committee on Un-American Activities. Count 2 was dismissed on motion of petitioner (J.A. 10). Having waived trial by jury, petitioner was found guilty on Counts one, three, and four, and was sentenced to four months' imprisonment and to pay a fine of $100 (J.A. 10–11).

The pertinent facts may be summarized as follows:

In the summer of 1956, the Committee began an investigation of Communist penetration of communications facilities (J.A. 12–13). During its investigation the Committee received information that petitioner was employed in the communications industry as an employee of Western Union Telegraph Company, that he handled government coded messages, that he was a member of the American Communications Association, a Communist controlled union, and that he was a member of the Communist party (J.A. 81–82, 87, 89–90). On the basis of that information, the Committee believed that petitioner had information which would be useful to it in its investigation (J.A. 14–15; Gov. Ex. 4, pp. 1–2).

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[1] "J.A." refers to the Joint Appendix in the court of appeals.

On July 10, 1957, the Committee adopted a resolution authorizing (J.A. 20–21):

> the holding of hearings in Washington, beginning July 17, 1957, * * * for the purpose of considering whether or not members of the Communist Party, or persons subject to its discipline are employed in various media of communications used in the transmission of vital communications, and the advisability, in the national defense and for internal security, of the adoption of remedial legislation authorizing the Defense Department and other Government agencies to adopt and enforce appropriate regulations designed to protect and preserve inviolate secret and classified Government information and investing in appropriate Government agencies, power to preclude access to vital communication facilities in time of war or other national emergency, persons who probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage.

On July 12, 1957, the Chairman of the Committee appointed a subcommittee of three to conduct the hearings (J.A. 21).

The subcommittee met on July 17, 1957. In his opening statement the chairman of the subcommittee read the Committee's resolution of July 10, 1957, and went on to say (Gov. Ex. 8,[2] p. 1378):

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[2] Government Exhibit 8 is Part I of the Hearings before the Committee on Un-American Activities of the House of Representatives, 85th Cong., 1st Sess., July 17, 18, 19, August 2, 9, 1957, entitled *Investigation of Communist Penetration of Communications Facilities.*

> In these hearings beginning now, the first of a series of this general subject, the committee hopes to ascertain the extent of the penetration and control exercised by members of the Communist Party over an industry which is vital to our defense; namely, communications. In the event that testimony given during these hearings reflects a situation correctable by legislation, the committee will recommend the appropriate measures at the proper time. It is the purpose of the subcommittee in the conduct of these hearings, to discharge the duties placed upon us by the Congress by calling witnesses who, we have reason to believe, possess information which will be of value to us and to the Congress in the consideration of such legislation.

Witnesses heard on July 17 testified to the vulnerability of the communications system to sabotage and of the efforts of the Communist Party to infiltrate that industry. The first witness was the president of American Cable and Radio Corporation, Admiral Ellery W. Stone. Admiral Stone testified that that corporation was engaged in international communications by wire and radio, that it also operated a shore-to-ship system, and that its services were used by private companies engaged in defense work and by agencies of the United States Government including the State Department and the Armed Forces (Gov. Ex. 8, pp. 1379–1380). He also testified that employees have access to confidential and coded messages, disclosure of which would be dangerous to national security, that a subversively inclined employee could deliver copies of such messages to outsiders and commit acts of sabotage to delicate and complex equip-

ment, and that employment on international communications facilities would give employees the means of sending information to the enemy (*id.* at p. 1381).

Admiral Stone testified that one of the three principal labor organizations in the communications industry was the American Communications Association, and that that union had been expelled from the C.I.O. in 1950 because it was dominated by the Communist Party and because the union's policies and activities from 1939 "resulted in subservience to the interests of the Communist Party, and through that party to the Soviet Union" (Gov. Ex. 8, pp. 1381–1383). He testified that, in 1951 and 1952, witnesses before a Senate subcommittee had identified some of the principal officers of the union as Communists and that those persons were still (in 1957) officers of the union (*id.* at pp. 1386–1387). Nevertheless, he said, the union was still certified by the National Labor Relations Board as a bargaining agency for communications workers, and he submitted recommendations for amendments to Section 9(h) of the Taft-Hartley Act to prevent Communist-dominated unions from being certified (*id.* at pp. 1392–1396).

J. L. Wilcox and Clarence Willis of the Western Union Telegraph Company also testified that the American Communications Association was operating in the field of international communications, that certain officers of the Association had been identified as members or one-time members of the Communist Party, and that there was a substantial possibility of sabotage by employees who had an inclination to commit such acts (Gov. Ex. 8, pp. 1400–1410).

Another witness before the subcommittee on July 17 was Michael Mignon, a union representative for the Communications Workers of America, A.F.L.–C.I.O. (Gov. Ex. 8, p. 1410). He had been a vice president of the Association in 1938 (*ibid.*). Mignon testified that he had been a member of the Communist Party from 1936 to probably late 1940, at the same time that he was active in union affairs in the Association, and that he participated in closed Communist cell meetings in which union policy was secretly determined and adopted without the knowledge of the membership in general (*id.* at pp. 1411–1412). He stated that "the importance of obtaining control of the communications industry in times of stress or in revolutionary times was a primary factor, and therefore the efforts of the Communist Party in subsidizing the union and offering whatever assistance they could in building the union in the communications industry was primarily the main objective" (*id.* at p. 1411). He said that, even if the Party was unable to gain control of the union, it would still be in a position to sabotage (*id.* at p. 1420).

After hearing testimony on July 18 and 19, the subcommittee continued the hearings over to August 2, 1957.[3] In an opening statement on that day, which was heard by petitioner (J.A. 29), the chairman announced (J.A. 20):

> This morning's hearings are a continuation of previous hearings started on July 17, 1957, this

[3] One of the witnesses who appeared on July 18 was Frank Grumman, who, like petitioner, refused to answer numerous questions and was convicted of contempt. See *Grumman* v. *United States*, pending on petition for a writ of certiorari, No. 436, this Term.

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> being a continuation of a series of hearings in the communications industry in the United States, namely, the position and influence held by members of the Communist Party and organizations dedicated to the Communist objective in that field of communications industry, principally.

The chairman then set forth the Congressional resolution authorizing the Committee and the Committee's own resolution of July 10, 1957 (see *supra*, p. 4), authorizing the hearings (J.A. 20–22). He continued (J.A. 22–23):

> In these hearings * * * the committee hopes to obtain additional information respecting the extent of the penetration and control exercised by members of the Communist Party in the United States over an industry which is vital at all times to our defense, namely, communications.
>
> In the event the testimony given during these hearings reflects a situation correctable by legislation or which may be remedied by legislation, the committee will recommend the appropriate measures at the proper time.
>
> It is the purpose of the subcommittee in the conduct of these hearings to discharge the duties placed upon us by the Congress by calling witnesses who, we have reason to believe, possess information which will be of value to us and to the Congress in the consideration of such legislation.

Petitioner, who was the third witness on that day, testified that he had been a service writer for Western Union Telegraph for forty-one years and that he had access to government coded messages (J.A. 24–25).

He testified that he was not at that time (1957) a member of the Communist Party, but that he had been a member of the Party in 1948 (J.A. 26). When he was asked who enlisted him into the Party, petitioner refused to answer "on the grounds set forth in the decision of the Supreme Court in the *Watkins* and *Sweezy* cases, and the statement filed with the committee by Mr. Grumman on July 18, including (1) the lack of jurisdiction of the committee; (2) my rights under the first amendment; (3) the vagueness of the resolution setting up this committee; and (4) the lack of pertinency of this committee" (J.A. 26).[4]

Petitioner was then asked the question which formed the basis of Count one of the indictment, *i.e.*, whether the person who recruited him into the Party was a communications worker (J.A. 27-28). Upon his refusal to answer for the reasons previously given, the staff director of the Committee said (J.A. 28):

> Mr. Chairman, I respectfully suggest that I be permitted to explain to the witness why it is pertinent to this inquiry for us to insist that this witness tell us whether or not the person who recruited him into the Communist Party was at that time in the communications field as a communications worker.

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[4] The petition states that no question was asked by Mr. Arens as to who enlisted petitioner into the Communist Party (Pet. 4, note 1). That is an error, apparently resulting from the fact that in the Joint Appendix, p. 26, two lines of the interrogation were inadvertently omitted. The two lines read:

"It had no real name, no designation for it of any kind [in answer to the question what cell or group of the Party he belonged to].

"Mr. ARENS. Who enlisted you in the Communist Party?"

Petitioner's statement of objections followed (J.A. 26; Gov. Ex. 8, pp. 1497-1498).

> Now, Mr. Witness, this committee is considering legislation to safeguard this Nation from possible espionage or sabotage facilities by Communists.
>
> If the person who enlisted you into the Communist Party was engaged in the communications field, that person undoubtedly would have some information which would be of use to this committee in developing facts respecting Communist penetration of the communications facilities of this country.
>
> Therefore, I respectfully suggest now, Mr. Chairman, that this witness be ordered and directed to tell the committee whether or not the person who recruited him into the Communist Party was, to his knowledge, engaged in the communications industry.

When directed by the chairman to answer, petitioner persisted in his refusal to answer "on the reasons stated previously * * * [i]ncluding the matter of personal conscience which prevents me from doing things that I am not sure of, and also on the grounds that I don't see what this question has to do with the question propaganda which this committee is concerned with" (J.A. 30).

The staff director then stated to petitioner (J.A. 30–31):

> On the basis of extensive staff investigation it is the judgment of the staff that there is now in the establishment in which you are engaged at least one cell of the Communist Party operating.
>
> We should like to have you tell us now whether or not there are any persons engaged at Western Union who at any time have been known by you to be Communists.

After petitioner declined to answer "on the grounds stated," the staff director further advised him (J.A. 31):

> I say to you that the pertinency of that question is this: If you do have such information and if we can get the names of those people and if we can get them to testify, we will have information which will form a solid foundation upon which this committee can recommend legislation to the Congress, to protect the security of this Nation.

The chairman directed petitioner to answer the question, stating that "[c]ounsel now for the second time has explained the pertinency of the other question, and that the same explanation plus this explanation as to pertinency applies" (J.A. 31). Petitioner still refused to answer, and his refusal constituted the basis for Count two of the indictment.

Petitioner denied that he was relying on the self-incrimination clause of the Fifth Amendment (J.A. 33). After answering questions about his withdrawal from the Party, he was asked to what union he belonged (J.A. 33–34). He replied, "the American Communications Association" (J.A. 34). He was then asked and refused to answer the questions on which Counts three and four were based—namely, "were any of the officers of your union members of the Communist Party at the time you were a member of the Communist Party," and "were any of the present officers of your union members of the Communist Party at the time you were in the party" (J.A. 34). Petitioner was advised that "the questions were asked you for the same reasons that Mr. Arens, our counsel,

gave you for asking the other questions" and that the questions "are pertinent for the same reasons that he [Mr. Arens] advanced" (J.A. 34).

The subcommittee reported the fact of petitioner's contumacy to the full Committee which in turn made its report to the House of Representatives (Gov. Ex. 4; H. Rep. 1241, 85th Cong., 1st Sess., p. 16). The House directed that the report be certified by the Speaker to the United States Attorney for prosecution (Gov. Ex. 5; H. Res. 409, 85th Cong., 1st Sess.), and the certification was made as directed (Gov. Ex. 6).

ARGUMENT

Petitioner was convicted for refusing to answer three questions asked him by a Congressional committee concerning the Communist Party—whether the person who recruited him into the Party was a communications worker (Count one), whether any of the officers of his union were members of the Communist Party at the time he was a member of the Communist Party (Count three), and whether any present officers of the American Communications Association were Party members when he was in the Party (Count four). While all three related to the activities of other persons, none asked for the disclosure of the names of Party members. Admittedly, if petitioner had answered these questions, the subcommittee would have likely asked further questions concerning the names. Nevertheless, it is clear that answers to each of these questions, and particularly the question involved in Count four, would in themselves probably provide information of considerable value to the Committee. And

we emphasize that since petitioner was given a general sentence and fine on all three counts which was less than the maximum authorized by 2 U.S.C. 192 under any one count, the judgment below must be affirmed if any one of the counts is upheld. *E.g., Barenblatt* v. *United States,* 360 U.S. 109, 115.

1. Petitioner claims (Pet. 16) that the hearing at which he appeared had no valid legislative purpose and that the resolution creating the Committee was unconstitutionally vague. But as petitioner himself admits, these issues are controlled by the decisions of the Court in *Barenblatt, Wilkinson* v. *United States,* 365 U.S. 399, and *Braden* v. *United States,* 365 U.S. 431.

2. Petitioner's basic contentions concerning the First Amendment, as he himself seems to admit (Pet. 16), have been answered by the *Barenblatt, Wilkinson,* and *Braden* cases, which establish that the First Amendment does not prohibit Congress from investigating Communist activities. There are, however, three First Amendment issues which might be said to be based on the particular circumstances of this case.

a. Petitioner argues (Pet. 11–13) that *Barenblatt* v. *United States, supra,* 360 U.S. at 126, requires that "[w]hen First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown" and that here the balance must be struck in favor of the individual interests. We submit, on the contrary, that the public interest in this case outweighs the individual in-

terests involved even more clearly than in the *Barenblatt, Wilkinson,* and *Braden* cases.

In those cases the House Committee on Un-American Activities was investigating the Party's organization and Communist activity in education, in propaganda, and in the South. Important as such investigations were, we submit that the investigation in this case was of considerably greater importance to the national security. For, as the hearings before the Committee showed (see *supra,* pp. 5–7), the Committee had considerable information that the Communist Party has had great success in infiltrating the communications industry, to the extent that it even controlled an important union in that industry. Moreover, the Committee heard testimony that Communists were in a position to intercept secret government messages and to engage in sabotage.

The Court in *Barenblatt* mentioned three particular considerations in weighing the private and public interests (360 U.S. at 134). First, the Court found that "[t]here is no indication in this record that the Subcommittee was attempting to pillory witnesses" (*ibid.*). Similarly, there is no such indication in this record. The subcommittee allowed the petitioner to state his objections fully, and then made a considerable effort to persuade petitioner to testify (see *supra,* pp. 9–11).

Second, the Court found in *Barenblatt* that the witness did not appear as a result of "indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee" (360 U.S. at 134).

Here, the Committee had information, and subsequently petitioner admitted, that he had been a Party member, that he was a member of the American Communications Association (which, according to considerable information possessed by the Committee, was controlled by Communists), that he worked in the communications industry for forty-one years, and that he had access to government coded messages. Clearly, it was reasonable for the Committee to question petitioner as part of the investigation of Communist activities in the communications industry.

And, third, the Court in *Barenblatt* said that "the relevancy of the questions * * * is not open to doubt" (360 U.S. at 134). As we will show (pp. 21–23), the same is equally true in this case; the pertinency of the questions to the subject under inquiry was clear and was explained to petitioner at the hearing.

Petitioner claims (Pet. 12), however, that the Congress (through the Senate Internal Security Subcommittee) had previously conducted investigations of Communist activity in the communications industry in 1951, 1952, and 1954, and that there was nothing to suggest that petitioner had any information of use to the House Committee. Since the Senate Committee had found considerable Communist activity in the communications industry endangering national security,[5] the House Committee clearly had a great interest in bringing this information up to date in 1957. More-

[5] See e.g., Hearings before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary, United States Senate, 82d Cong., 1st Sess., on Subversive Infiltration in the Telegraph Industry, May 14, 15, 16, June 5, 6, 12, and 14, 1951.

over, while petitioner testified that he had joined the Party in 1948 and remained a member only in a casual way for "a few years" after 1948 (J.A. 26), the Committee could reasonably believe that he had information of value to its investigation. If petitioner had answered the questions involved in this proceeding, the Committee would have probably learned of other Party members in the communications industry. If these people were still Party members, this would further add to the Committee's knowledge of present Party infiltration of the communications industry. Even if they were no longer members, they could be asked to testify concerning Party methods and operations, as well as about other persons in the communications industry whom they knew to be Party members.

b. It makes no difference that the questions as to which petitioner was convicted relate to other persons. First, the questions petitioner refused to answer did not interfere with his own First Amendment rights of speech and association since any interference with those rights had already occurred when he admitted his own Communist Party membership. Moreover, petitioner claimed only his own First Amendment rights before the subcommittee and not those of other persons (J.A. 26). And it is well established by decisions of this Court that a witness before a Congressional committee can raise at his trial for contempt only those objections he stated to the committee at the time he refused to answer its questions. *E.g.*, *Ullmann* v. *United States*, 350 U.S. 422, 439, note 15 (a claim under the First Amendment); *Barenblatt* v.

United States, supra, 360 U.S. at 123–124 (a claim that a committee failed to apprise the witness of the pertinency of the questions).

Second, it is also well established that a person cannot claim the constitutional rights of other persons. *E.g., Tileston* v. *Ullman,* 318 U.S. 44, 46; *Jones* v. *United States,* 362 U.S. 257, 260–267. The only exception is when a litigant can properly be said to represent the persons whose constitutional rights were allegedly violated, and, in addition, the litigant himself was seriously injured. We submit that the questions as to other persons did not seriously injure petitioner. Moreover, petitioner did not have the close relationship necessary to claim that he represented other present or past members of the Communist Party. He of course was not an organization to which the third persons belonged (cf. *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123); nor was he apparently an officer—or at the present time even a member—of the Party.[6] Petitioner's only connection with the unnamed third persons is at most one of friendship and association in the recent past. See the government's brief in *Deutch* v. *United States,* No. 233, Oct. Term 1960, pp. 29–35.

Third, on the merits, a Congressional committee has at least as much reason to question a witness concerning other persons as about himself. As we have indicated above (p. 16), information about other per-

[6] Cf. *Uphaus* v. *Wyman,* 360 U.S. 72, 77–78, where the Court refused to decide whether the director of a summer camp could assert the constitutional rights of his guests.

sons has at least two purposes: (1) to show the number and position of Party members in order to ascertain the extent of and danger from Party activity; and (2) to discover other witnesses who can provide information concerning Party activities. And the interference with freedom of speech and association is, at most, the same as the interference resulting from questions as to the witness' own Communist activities. Thus, just as in *Barenblatt, supra,* 360 U.S. at 134, "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and * * * therefore the provisions of the First Amendment have not been offended."

c. Petitioner claims (Pet. 13–15) that the trial court erred in refusing to consider the proffered testimony of Professor Emerson (J.A. 97–118) in weighing the private and public interests involved in order to determine petitioner's First Amendment rights. The proffer of evidence was identical to that in *Yellin* v. *United States,* No. 477, this Term, certiorari granted, October 9, 1961 (J.A. 95). Except for preliminary questions designed to show his qualifications as an expert, the sole questions asked Professor Emerson, a Professor of Law at Yale, were: "Have you an opinion as to the various factual considerations which have to be taken into account in balancing the competing public and private interests at stake in the circumstances here presented?" and "Professor Emerson, in your opinion, in view of the facts that you have stated, in whose favor should the balance be struck between the various interests here at stake?" (J.A. 102, 117). These questions clearly sought con-

clusions concerning a question of law. Professor Emerson's answers were concerned in large part with what legal factors the courts should consider, and what weight should be given to each of these factors, not with evidence relating to factors which the court might consider.

Professor Emerson's statements, coming at the close of petitioner's case, read like the closing argument of able counsel summarizing his client's legal position under the First Amendment. While such a statement could be properly presented by the petitioner's counsel as legal argument, either orally or in a brief, the trial court correctly held that it was not evidence.

3. Petitioner, relying heavily on cases involving arrests under the Fourth Amendment, contends (Pet. 9–11) that the Committee did not have probable cause to subpoena him. We submit that this claim is without merit.

a. As we will show in our brief in *Shelton* v. *United States*, No. 9, this Term, the issue whether a Congressional committee has probable cause to subpoena a witness must be raised when the witness appears before the committee. Here, petitioner read a statement which was prepared with the aid of counsel (J.A. 26–27) giving four grounds for his refusal but which clearly did not even suggest that he was relying on the Fourth Amendment or, even more generally, on any lack of probable cause. Thus, petitioner cannot raise his contention as to probable cause, at least insofar as it rests on the Fourth Amendment.

b. In any event, as we will show in our brief in *Shelton* v. *United States, supra,* the Fourth Amendment does not apply to subpoenas to testify as contrasted to subpoenas *duces tecum.* We further show that, even if it does apply, this Court has held in *Oklahoma Press Publishing Co.* v. *Walling,* 327 U.S. 186, that its restrictions on administrative subpoenas (with regard to subpoenas *duces tecum*) are not nearly so strict as with regard to arrests and searches and seizures. The only requirements are that "the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry" (*id.* at 209). If the Fourth Amendment applies at all, we submit that this standard is applicable to subpoenas to testify as well as subpoenas *duces tecum,* and to Congressional committees as well as executive agencies.

Even if the Fourth Amendment does not apply to subpoenas to testify, this Court has indicated in *Barenblatt* v. *United States,* 360 U.S. 109, 134, *Braden* v. *United States,* 365 U.S. 431, 433–435, and *Wilkinson* v. *United States,* 365 U.S. 399, 412–413, that a Congressional committee investigating Communist activities cannot, consistent with the First Amendment, subpoena a witness "as the result of an indiscriminate dragnet procedure, lacking in probable cause for belief that [the witness] possessed information which might be helpful to the subcommittee" (365 U.S. at 412). As we will contend in our brief in *Shelton,* the *Barenblatt, Braden,* and *Wilkinson* cases clearly do not apply the same standard of probable cause as for arrests or searches and seizures. Rather, they

apply essentially the same standard as was laid down for subpoenas *duces tecum* in the *Oklahoma Press* case.

c. Applying that standard to the facts here, the Committee clearly had reasonable ground to believe that petitioner "possessed information which might be helpful to the committee" and that was "relevant to the inquiry." The Committee heard considerable testimony that Communists held positions in the communications industry by which they could seriously endanger national security through espionage and sabotage (see *supra*, pp. 5–7). The record shows that the Committee had information that there was a Communist cell in the establishment where petitioner worked and that the American Communications Association was Communist controlled (see *supra*, pp. 3, 10). Petitioner admitted that he had been a member of the Communist Party, that he worked in the communications industry, that he was a member of the American Communications Association, and that he had access to government coded messages (see *supra*, pp. 8–9, 11). Thus, the Committee had reasonable grounds to question petitioner concerning the Committee's investigation of Communist Party activities in the communications industry.

4. Petitioner argues (Pet. 8–9) that the pertinency of the questions which resulted in his conviction to the subject under inquiry was not made sufficiently clear to him at the hearings and that the government failed to prove pertinency at his trial.

a. As to whether petitioner was sufficiently apprised of the pertinency of the questions, he admitted at the

trial that he heard the opening statement of the chairman of the subcommittee on the day he testified. The chairman stated that the hearings were a continuation of the earlier hearings which investigated "the position and influence held by members of the Communist Party and organization dedicated to the Communist objectives in that field of communications industry, principally" (J.A. 20). He then read the resolution of the Committee authorizing the hearing for the purpose of investigating Communist activities in the communications industry and of adopting legislation to protect government secrets and prevent espionage or sabotage in this industry (J.A. 20–21). Finally, the chairman said that "[i]n these hearings * * * the committee hopes to obtain additional information respecting the extent of the penetration and control exercised by members of the Communist Party in the United States over an industry which is vital at all times to our defense, namely, communications" (J.A. 22). Thus, petitioner was clearly informed that the subcommittee was investigating Communist activities in the communications industry.

The questions on which petitioner was convicted sought information concerning the Communist activity of persons in the communications industry as to whom petitioner would likely have knowledge. Those questions were on their face clearly pertinent to the subject of Communist activity in the communications industry. As this Court said in *Barenblatt* v. *United States, supra,* where a committee was investigating

Communist infiltration of education: "petitioner refused to answer questions as to his own Communist Party affiliations, whose pertinency of course was clear beyond doubt." 360 U.S. at 125.

Moreover, when petitioner refused to answer whether the person who had recruited him into the Party was a communications worker (Count one), the staff director of the Committee explained that "[i]f the person who enlisted you into the Communist Party was engaged in the communications field, that person undoubtedly would have some information which would be of use to this committee in developing facts respecting Communist penetration of the communications facilities of this country" (J.A. 28). After the staff director said that the Committee had information of at least one Communist cell in the "establishment" where petitioner worked, he asked petitioner if he knew any persons in Western Union to be Communists at any time (Count two, which was dismissed) (J.A. 30–31). The staff director then explained the pertinency of this question (J.A. 31):

> I say to you that the pertinency of that question is this: If you do have such information and if we can get the names of those people and if we can get them to testify, we will have information which will form a solid foundation upon which this committee can recommend legislation to the Congress, to protect the security of this Nation.

After petitioner was asked and refused to answer the questions involved in Counts three and four he was

told that the previous explanations of pertinency applied to this question (J.A. 34).[7]

b. Since, as we have shown above, the subcommittee clearly apprised petitioner of the pertinency of the question to the subject under inquiry, the government proved at petitioner's trial the pertinency of the questions. For the transcript of the hearings was introduced at the trial (Gov. Ex. 8).

5. Lastly, petitioner contends (Pet. 13–16) that the trial court erred in denying petitioner's motion for a hearing in which to prove that government employees on the grand jury were biased against him. As we will show in our brief in *Shelton* v. *United States*, *supra*, a defendant is not entitled to a hearing as to the bias of grand jurors unless he, at the least, alleges specific and convincing facts of strong bias in individual grand jurors. As in *Shelton*, however, petitioner claimed only that government employees in general are biased in cases involving security issues because of the government's loyalty and security programs (see J.A. 5–9). He is not entitled to a hearing to conduct a general exploration into the motives of each of the fifteen government employees on the grand jury.

[7] Petitioner notes (Pet. 9) that he was not told that the previous explanations of pertinency applied to the question involved in count four until after he had been directed to answer (J.A. 34). But petitioner could have asked to answer the question after the pertinency was explained to him. Moreover, as we have shown above, the further explanations of pertinency after petitioner refused to answer were not necessary; the questions were on their face pertinent to the subject under inquiry which had been fully explained to petitioner at the start of the hearings.

CONCLUSION

Since several of the issues in this case are now pending before the Court in other cases, the Court may wish to defer passing on the petition for a writ of certiorari until those cases are decided. We respectfully submit, however, that, for the foregoing reasons the decision below is correct and that ultimately the petition for a writ of certiorari should be denied.

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